

IN THE MATTER OF	*	BEFORE THE
HARRY G. PIRRUNG, JR. and	*	HOWARD COUNTY
LINDA M. PIRRUNG,	*	BOARD OF APPEALS
t/a T.W. BOYS CO., INC.	*	BA Case No. 08-039C
Petitioners	*	

DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on October 27, 2009, November 24, 2009, December 10, 2009, February 23, 2010, and April 6, 2010 to hear the petition of Harry G. Pirrung, Jr. and Linda M. Pirrung, t/a T.W. Boys Co., Inc., for a Home Based Contractor conditional use in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District. The petition was filed pursuant to Section 131.N.27. of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

This case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the various technical staff reports, the Department of Planning and Zoning Technical Staff Report recommending approval signed November 24, 2008, the General Plan for Howard County, the General Plan of Highways, and the petition and plat submitted by the Petitioner were incorporated into the record by reference.

The Petitioners were represented by Andrew H. Robinson, Esquire. The Protestants to the Petition, Ralph and W. Susanne Van Wey, were represented by David F. Mister, Esquire.

The following persons testified on behalf of the Petitioners: Harry G. Pirrung, Jr., Joyce Jackson, Rosetta Polk, Eric Glisson, Judy Hanft, Tod Lipman, Harry R. Huber III, Robert Ballantine, Jr., Edward Pacylowski, Eric Metzman, Mike Smith, and Jake Hanlon. Rebuttal testimony for the Petitioners was provided by Harry G. Pirrung, Jr., Hope Jackson, Joyce Jackson, Eric Glisson and Kelli Hebron.

Petitioners proffered, and the Board accepted, the following documents into evidence:

Petitioner's Exhibits

- | | |
|------------|--|
| Exhibit #: | <ol style="list-style-type: none">1. Conditional Use Plan (large plat)2. Conditional Use Plan (small copy)3. Building Footprint of Building4. Corrective and Confirmatory Deed of property 8/28/085. Chart of Sound Level Readings6. Driveway Use Consent Letter dated 6/12/08 from neighbors7. Petitioners Bound Book of Photos of Property and Vicinity8. Petitioners Photo Exhibit Plan9. Certified Copies from ZB 928 R&M, Comp. Zoning – Letter from Chairman dated 9/3/92 & Technical Staff Report dated 1/7/9210. True & accurate copies from previous Howard County Zoning Regulations11. Excerpt of the Howard County Code re: noise levels12. COMAR regulations re: noise levels13. CCR Registration – Trader Partner Profile14. Three Contracts of Work Performed by Mr. Pirrung15. Record of Investigation – Case No. 08-C186 of Howard County Health Department16. Letter from A. Wayne Six dated 2/25/10 concerning appraisal report generated by Mr. Van Wey |
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The following individual testified in opposition to the petition: Ralph Van Wey.

The opponents proffered, and the Board accepted, the following documents into evidence:

Protestants' Exhibits

- | | | |
|-----------|----|-------------------------------------|
| Exhibit # | 1. | Petition opposing project |
| | 2. | Slide presentation |
| | 3. | Appraisal of Mr. Van Wey's property |

The Department of Planning and Zoning, in its Staff Report signed November 24, 2008, recommended that the conditional use be granted, subject to the condition that "[T]he Conditional Use shall be conducted in conformance with and shall apply only to the Home Based Contractor operation as described in the petition and as depicted on the Conditional use plan submitted on July 28, 2008, and as may be revised by the Hearing Examiner, and not to any other activities, uses, or structures on the Property".

The Petitioners amended their Conditional Use plan on October 27, 2009, at the first night of public hearing before the Board of Appeals. As a preliminary matter, the Board addressed the issue of whether or not the changes made by the Petitioners to their original Conditional Use plan were substantive in nature necessitating a remand of the amended petition to the Department of Planning and Zoning for further recommendations. A majority of the Board found that the amendments to the Conditional Use plan were not substantive in nature and continued with the hearing pursuant to Board Rules of Procedure 2.202 (b) & (c).

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The subject property is located in the 5th Election District on the west side of Addison Way about 600 feet north of Justifiable Court and 200 feet south of I-70. It is referenced on Tax Map 8, Grid 14, as Parcel 173 and is known as 14777 Addison Way (the "Property").

2. The conditional use site consists of an irregularly shaped 8.12 acre parcel improved with a single-family detached dwelling and a one-story L-shaped aluminum building ("the Building"). The 25-foot tall building is depicted on the plan as being located 30 feet from the east property line at its closest point and approximately 56.7 feet at its farthest.
3. A shared asphalt driveway accessed from Addison Way provides initial access to the Property. This driveway runs west for about 460 feet, and then turns north into the Property and extends approximately 300 feet where it divides to form a circular driveway. The east side of the circular driveway extends about 200 feet to serve the Building. At the northwest side of the circle, the paving material changes to stone/gravel and loops to the west and north sides of the Building used for storage of equipment on the north side of the building. At the eastern terminus of this gravel area is an approximately 35 foot by 30 foot personal log pile firewood splitting area. On the west side of the gravel driveway is a picnic area, a 12 foot by 12 foot dumpster pad, and personal firewood shed. Access and parking for the residence is provided along the west side of the paved driveway.
4. The Property is predominantly wooded to the west of the dwelling and Building and to the east of the paved portion of the driveway. There is a narrow tree line between the Building and several properties along the eastern lot line, including eight mature Leland Cypress trees, which are planted parallel to a portion of the Building's east side.

5. All adjacent properties are also zoned RC-DEO. The eastern abutting Parcels 76, 206, 77 and 147, which have direct access to Addison Way, are each improved with a single-family detached dwelling sited in each parcel's eastern (front) section. The closest dwelling the Property, on Parcel 206, is about 225 feet from the Petitioners' property line. The rear portion of Parcel 75 abuts the north and west sides of the Property.
6. The 6.59-acre Parcel 138 to the Property's south (the Van Wey residence) is improved with a single-family dwelling situated about 350 feet from the Petitioners' dwelling. The 7.3-acre Parcel 134 to the Property's southwest is improved with several structures situated more than 500 feet from the Building and to the west and south of the Property's western woods.
7. The 43-acre, non-abutting Parcel 386 to the Property's west is encumbered with an environmental easement. Parcels 138, 134 and 386 are all accessed via the shared driveway.
8. Addison Way has one travel lane in each direction and about 12 feet of paving within a variable width right-of-way. Addison Way terminates in a cul-de-sac along the frontage of Parcel 75, approximately 60 feet south of I-70. The posted speed limit is 25 miles per hour and 15 miles per hour on curved portions.
9. The Property is served by private well and septic facilities.
10. The Property is designated on the Policies Map 2000-2020 of the 2000 General Plan as "Rural Conservation." The 2000 General Plan Transportation Map 2000-2020 depicts Addison Way as a local road.

11. The Petitioners are seeking conditional use approval for a home-based contracting operation. The home-based contracting operation involves commercial and residential construction, erection/design of pre-engineered buildings and interior build-outs and alterations. Currently, the Property is in use as a residence and a home-based contracting operation known as T.W. Boys Co., Inc. The conditional use proposal is to allow the continuation of the home-based contracting operation. The permitted residential use of the Property will also continue. No building additions or new structures are proposed in conjunction with the proposed conditional use. There are four full-time employees and one part-time employee for the business. Presently, the employees consist of the Petitioners, Harry G. Pirrung, Jr. and Linda M. Pirrung and their two sons, as well as one full-time non-family employee.
12. Harry G. Pirrung, Jr. testified and stated that he has been using his property in connection with his contractor business continuously for the last 34 years. For approximately 24 of those 34 years, Mr. Ralph Van Wey has been his neighbor to the immediate south and southwest. Until April of 2008, no zoning complaints had ever been filed with respect to this contractor use, and Mr. Pirrung had received no negative complaints from any of his neighbors. In the Spring of 2008, Mr. Van Wey approached him regarding his displeasure with respect to dirt bike riding on Mr. Pirrung's property and a zoning complaint was filed with the Department of Planning and Zoning, specifically to stop Mr. Pirrung's sons from riding dirt bikes on and around the property. Per Mr. Pirrung, a zoning inspection occurred and the dirt bike track was promptly

removed and no dirt bikes have been ridden on his property since. Mr. Pirrung stated that the zoning inspector noted that, in addition, he has personally observed the Petitioner's accessory building and commercial vehicles during his inspection and that Mr. Pirrung would have to secure conditional use approval to continue the use of his accessory building in his home-based contractor business.

13. Mr. Pirrung testified and stated that his property is over 8 acres in size and is heavily buffered throughout. In addition, Mr. Pirrung noted that, due to the natural landscaping and additional landscaping that he installed, the accessory building and parking areas are virtually invisible from roadways servicing the property and from the Van Wey residence. Mr. Pirrung stated that he placed numerous Leyland cypress trees at each line of sight from the Van Wey's property to ensure that his building would not be visible.
14. Mr. Pirrung prepared and submitted a floor plan (Petitioners' Exhibit #3) designating the various interior portions and uses of the accessory building under the amended petition. Under this plan, the use of the accessory building is limited to the following:
 - 1,025 square feet for vehicle and equipment maintenance, all indoors and limited to those activities permitted under 131.N.27;
 - 450 square feet for business equipment storage (backhoe and bobcat) which is covered by an overhang;
 - 1025 square feet of personal storage space, principally, Mr. Pirrung's personal lawn care and equipment;
 - 3,200 square feet of business vehicle and equipment storage, and storage of left-over materials from job sites, including bolts, lumber, drywall,

and other such miscellaneous items;

- 800 square feet of personal storage; and lastly,
- 3,308.87 square feet for office space and Mr. Pirrung's woodshop. Mr. Pirrung testified that the woodshop was included with the amended petition in response to comments that he on rare occasions uses his personal wood-working tools in connection with his home-based contractor business. Mr. Pirrung stated that he does not now, nor has he ever used his personal woodshop to fabricate or modify any wooden or metal components for retail or bulk sale. Mr. Pirrung does not intend to use this conditional use approval to turn his workshop into an assembly line manufacturing facility. Under his amended petition, Mr. Pirrung expressly limited the use of the workshop area in his business operation to those purposes directly related and incidental to the home-based contracting business and to work which is minor in nature and performed on a limited and infrequent basis. This is not a retail manufacturing facility and Mr. Pirrung does not manufacture steel buildings or pre-fabricated wooden buildings on site.

15. Mr. Pirrung testified that a total of three commercial vehicles are used in connection with his business. These vehicles consist of a truck, a van and a utility trailer. The three commercial vehicles are kept mainly indoors and infrequently leave the property.
16. Mr. Pirrung has designated a 1,320 square feet area outside of the accessory building for business parking. Mr. Pirrung is removing the "personal parking" area designated on the plan from his proposed use.
17. Mr. Pirrung has included the incidental use of his 144 square foot residential dumpster pad site. The collection of this dumpster will not exceed two collections in a thirty day period, and shall be restricted to the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. The dumpster is already in use in connection with Mr. Pirrung's residence.
18. There will be a maximum of 12 daily vehicle trips to and from the property by

non-resident employees. Mr. Pirrung stated that, rarely would he receive more than a few such visits a day, however, he is limiting the visits to that which is available under the accessory use regulations.

19. There will be absolutely no deliveries of equipment or supplies by tractor-trailer in connection with this home-based contractor use.
20. The Zoning Regulations limit the area used for parking and storage of commercial vehicles, equipment and supplies, whether exterior or interior under Mr. Pirrung's conditional use, to a maximum of 10,000 square feet. The total area used in connection with Mr. Pirrung's use under his amended petition (including the office/workshop and dumpster space) is 9,447.67 square feet.
21. Mr. Pirrung stated that there is a constant white noise generated by traffic along 70 and that the operation of his equipment with his accessory building results in no discernible elevation in noise readings in front of his own residence let alone the property line with his neighbor.
22. The constant noise from I-70 and the lack of noise from Mr. Pirrung's property were confirmed by those in the area who testified in support of the petition.
23. Individuals testifying in support of the petition confirmed that Mr. Pirrung's home-based contractor use produces no fumes, odors, vibrations, or other hazards.
24. Mr. Pirrung submitted numerous photographs demonstrating that the ingress and egress drives will continue to provide safe access with adequate sight distance and that Addison Way and the shared driveway present no unique safety hazards. No one testifying in support of the petition was aware of a single accident in the

last 30-plus years on Addison Way or the private drive. In addition, all of those witnesses in support of the petition who had personal knowledge of Mr.

Pirrung's shared driveway spoke to its excellent condition despite the advanced age of its paving.

25. The Zoning Regulations state that structures used for the conditional use shall be at least 50 feet from lot lines and all outdoor parking or storage areas shall be at least 100 feet from lot lines, unless the Hearing Authority finds that a lesser setback is more appropriate and will not adversely affect neighboring properties due to visual impact, activity, noise, dust, fumes, or other cause. Mr. Pirrung testified that the accessory building is located approximately 30 feet from his neighbors to the east, that the equipment storage area at the rear of the building which is covered by an overhang is located 70 feet from the closest lot line to the north, and that the designated outdoor parking in the front area is located 80 feet from the eastern property line. These areas are adequately screened from these neighboring properties by landscaping or the building itself and the two neighbors most affected to the east spoke in support of the reduced setback and the one neighbor to the north signed-up in support of the petition.
26. Mr. Pirrung submitted photographs demonstrating that his accessory building is no different in appearance from any other agricultural structure in the vicinity.
27. Joyce Jackson, Rosetta Polk and Eric Glisson provided direct testimony in support of Mr. Pirrung's petition. Those living closest to this proposed use (the Jacksons and Polks) not only had no objection whatsoever to this conditional use plan or the location of the building, they offered an expressed endorsement of

the use.

28. Ralph Van Wey testified in opposition to the amended petition. Mr. Van Wey testified and stated that his home lies over 500 feet from the Petitioner's Building and that that he could see it from his home no matter the season. In the past few years, Mr. Van Wey stated that he has heard trucks, tractor-trailers and refuse trucks coming in and out of the property at various times of the day, and that the noise generated from the Pirrung's business use of their Property has made it impossible for him to be outside and enjoy his own property. Mr. Van Wey did not undertake a decibel study of the alleged loud noise levels on the property; nor did he diary the traffic entering and exiting the Petitioner's property over any period of time.
29. Mr. Van Wey testified and stated that the proposed conditional use operation was not compatible with the residential uses on adjacent properties. Mr. Van Wey was opposed to the commercialization of a rural residential area and was fearful that this proposed home-based contractor operation would have a negative impact on his quality of life and that of his immediate neighbors. Other concerns raised by Mr. Van Wey were the intensity of the operation and safety of the road and driveway providing access to the conditional use site.
30. Mr. Van Wey also submitted an appraisal of his property in which the appraiser concluded that the value of his property would be negatively impacted by at least 10% or more based upon negative influences emanating from the business of Mr. Pirrung. Rebuttal evidence for the Petitioners revealed that the appraiser only inspected the property on one occasion, and at that time he

observed no negative influences or large trucks of any kind, and that all of the negative influences contained in the appraisal were the product of Mr. Van Wey and presented as assumptions by the appraiser.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as follows:

I. General Criteria for Special Exceptions (131.B).

A. **Harmony with the General Plan:** Section 131.B.1 of the Zoning Regulations requires that a conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the RC-DEO zoning district. In evaluating a plan under this standard, the Board must consider (a) the nature and intensity of the use, the size of the Site in relation to the use, and the location of the Site with respect to streets giving access to the Site; and (b) if a conditional use is combined with other conditional uses or permitted uses on a Site, whether the overall intensity and scale of uses on the Site is appropriate given the adequacy of proposed buffers and setbacks.

The proposed conditional use would be conducted on the 8.12 acre property which is the residence of the Petitioners. The Property is located in the western part of Howard County in an area which is agricultural and rural residential in nature. Interstate 70 lies to the north and MD 144 lies to the south of the Property. The building used in the conditional use operation is located in close proximity to I-70 and away from residential uses on adjacent properties. The site is accessed via a long shared driveway with a history of no traffic accidents related to the long-existing use. Given that the work related to the business is performed off-site, the Board concludes that the use is a low intensity use and would be compatible with surrounding properties. No building additions or new structures are proposed for the Site. The Board

therefore concludes that the nature and intensity of the use, the size of the Site in relation to the use, and the location of the site with respect to streets giving access to the site, are harmonious with the land uses and policies indicated in the Howard County General Plan for the Rural Conservation district in which it is located, in accordance with Section 131.B.1.a.

The proposed conditional use would be combined with a permitted use, a modest 3,420 square foot residential dwelling on the 8.12 acre parcel. Given the Property's size and buffering from vicinal properties by existing woods and distance from property lines, the Board concludes that the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks, in accordance with Section 131.B.1.b.

B. **Adverse Effect:** Section 131.B.2 of the Zoning Regulations states in pertinent part that the Hearing Authority shall have the power to permit a conditional use, provided the proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the Plan under this standard, the Hearing Authority shall consider the following four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; and (4) access.

When assessing a proposed conditional use under these criteria, we must begin with the realization that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the board is not whether the proposed use would have adverse effects in a RC district. The proper question is whether those inherent adverse effects are greater at the proposed site than they would be generally elsewhere within the RC district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*,

107 Md. App. 1, 666 A.2d 1253 (1995). Furthermore, applicants for conditional uses are not required to compare, and concomitantly the Board of Appeals is not to consider, the adverse effects of the proposed use at the proposed location to a reasonable selection or representative sampling of other sites within the same zone throughout the district or jurisdiction, taking into account the particular characteristics of the areas surrounding those other test sites. *People's Counsel for Baltimore County, et al. v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008).

Once a petitioner presents sufficient evidence establishing its proposed use meets the requirements of the statute, it is incumbent upon those opposed to the petition to show that the use at the proposed location would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

The Protestant who testified in opposition to the proposed conditional use has not met his burden of showing that the proposed use would have an atypical burden upon adjoining and surrounding properties. While the Protestant's concerns about the intensity of the operation, noise, traffic safety and lowered property values are understandable, the evidence placed before the Board does not sufficiently demonstrate any adverse effects unique or different than those ordinarily associated with a home-based contractor operation in a RC zoning district. The County Council has already determined that home-based contractors are presumptively compatible with RC-zoned communities. In this case, there is insufficient credible evidence in the record to defeat this presumption.

For the reasons stated below, the Petitioners have met their burden in presenting

sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a home-based contractor in the RC district.

C. **Physical Conditions.** Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The testimony and evidence indicate that the proposed home-based contractor facility will not generate inordinate noise, significant outdoor lighting, or other physical effects detectable within the neighborhood. The principal activities on the Property associated with the home-based contractor use would be in the morning and evening when the employees would be on the site, loading and unloading equipment and materials. Traffic to the site will be minimal and staggered. No lighting is proposed. The location of the building would help screen the parking area and the activities in that area from adjacent dwellings. The proposed home-based contractor use will not generate inordinate noise or other effects and it will be buffered by existing woods and landscaping. Any noise generated by the use will be attenuated by distance and proximity to I-70 and will not be greater than those ordinarily associated with such uses. The uses proposed on this site will not generate excessive noise, traffic, odors, or other adverse effects upon vicinal properties beyond those inherently associated with a home-based contractor business located in an RC-DEO zone, in accordance with Section 131.B.2. of the regulations.

D. **Structures.** The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

Based on the evidence, the Board concludes that the Petitioner has met its burden of demonstrating that the proposed use complies with Section 131.B.2.b. The structure used in the home-based contracting business is separated by distance and woods from residential uses on vicinal properties. The structure would comply with the RC district height requirements. Furthermore, there is no material evidence that the inherent operational characteristics of the proposed home-based contractor operation will discourage the use of adjacent land and structures.

E. Parking and Drives. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

Based on the evidence, the Board concludes that the Petitioners have met their burden of demonstrating that the proposed use complies with Section 131.B.2.c. Adequate parking is provided for the conditional use limit of three commercial vehicles on the site. The parking area, driveway and refuse areas are all buffered by existing woods, landscape plantings and distance from adjacent properties.

F. Safe Access. The ingress and egress drives will provide safe access with adequate sight distance, based upon actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

Based on the evidence, the Board concludes that the Petitioner have met their burden of demonstrating that the proposed use complies with Section 131.B.2.d. The use of the existing driveway from Addison Way will continue to provide access to the conditional use site.

II. Specific Criteria for Home-Based Contractors (Section 131.N.27).

- a. The number of commercial vehicles parked on the site shall be limited to one

commercial vehicle for lots one acre or smaller, two commercial vehicles for lots between one and three acres, three commercial vehicles for lots at least three and not more than 20 acres, and five commercial vehicles for lots larger than 20 acres.

The site is 8.12 acres in size. The business uses three commercial trucks: a flatbed F550 truck, a 16-foot trailer, and a commercial van, in accordance with Section 131.N.27.a.

b. The area used for parking and storage of commercial vehicles, equipment and supplies, whether exterior or interior, shall be limited to no more than five percent of the area of the lot or 10,000 square feet, whichever is less.

As discussed above, the total area used for parking and storing commercial vehicles, equipment, and supplies is 9,447.67 square feet, in accordance with Section 131.N.27.b.

c. Structures used for the conditional use shall be at least 50 feet from lot lines and all outdoor parking or storage areas shall be at least 100 feet from lot lines, unless the Hearing Authority finds that a lesser setback is more appropriate and will not adversely affect neighboring properties due to visual impact, activity, noise, dust, fumes, or other cause.

The Petitioner requests a reduction in the required 50 foot structure setback to 30 feet from his neighbors to the east for the accessory building, a reduction in the required 100 foot setback to 80 feet from the eastern property line for outdoor parking and to 70 feet from the northern lot line for the storage area at the rear of the building. Approximately two-thirds of the length of the Building encroaches into the 50 foot setback. The closest structure to the Building structure to be used in the home-based contracting business is the shed located on Parcel 147 which is situated approximately 80 feet from the Petitioner's property line and a considerable distance to the south of the Building. The closest residential use is the house on Parcel 206 which is situated approximately 225 feet from the Petitioner's property line. The residential

improvements on adjoining properties to the east are situated at the eastern ends of their respective lots and as such are well separated from the existing Building. The Property is partially wooded in this area and there is a row of mature evergreen trees situated near the southeast corner of the Building. The business vehicle parking area is not visible from properties to the east, due to its location on the west side of the Building, and the storage area is not visible from properties to the east due to its location on the north side of the Building. The Board concludes that the requested lesser setbacks are appropriate and will not adversely affect neighboring properties due to visual impact, activity, noise, dust, fumes, or other cause, as permitted by Section 131.N.27.c.

d. The location and design of the operation shall be such that the use will not be a nuisance to residents of neighboring properties due to noise, dust or fumes. Particular consideration shall be given to the location of loading areas, parking and circulation areas, and driveways in relation to neighboring properties.

Mr. Pirrung's property is over 8 acres in size and is heavily buffered throughout. Photographs submitted by Mr. Pirrung show that the accessory building and parking areas are virtually invisible from roadways servicing the property. The Building used in the conditional use operation is located in close proximity to I-70 and away from residential uses on adjacent properties. The Property has been accessed by a shared driveway for more than thirty years. The use of the shared driveway for combined residential and home-based contracting purposes has not resulted in damage or deterioration above what would ordinarily be expected if the driveway use had been limited to residential use only. There has not been a single accident or instance of a hazardous or dangerous occurrence resulting from the use of the shared driveway. There will be a maximum of 12 daily vehicle trips to and from the property by non-resident

employees and limitations on when commercial vehicles or equipment can be taken from or returned to the Property. There will be no deliveries of equipment or supplies by tractor trailers in connection with the home-based contractor operation. Lastly, Mr. Pirrung is limiting the use of his workshop area in his business operation to those purposes directly related and incidental to the home-based contracting business and to work which is minor in nature and performed on a limited basis. The Board concludes that the location and design of the operation will not be a nuisance to neighboring properties due to noise, dust or fumes, as required by Section 131.N.27.d.

e. If a driveway providing access to the proposed site is shared with other properties, the Petitioners shall demonstrate that the use will not result in damage to or deterioration of the shared driveway or in increased hazards to other users of the driveway.

The Petitioners adduced sufficient evidence to demonstrate that the use will not result in damage or deterioration to the shared driveway or increased hazards to other users of the driveway, in accordance with Section 131.N.27.e.

f. Parking and other outdoor uses shall be screened from adjoining properties and public roads by landscaping or other appropriate means.

The business vehicle parking will not be visible from properties to the east due to its location on the west side of the Building. Also the driveway is screened by existing woods and buffered by distance from adjoining properties and public roads, as required by Section 131.N.27.f.

g. New structures or additions to existing structures shall be designed to be compatible in appearance with other residential or agricultural structures in the vicinity, as demonstrated by architectural elevations or renderings submitted with the petition.

The Petitioners are not proposing to construct any new structures or additions for the conditional use. The Board concludes from the photographs submitted from Mr. Pirrung that the existing light-colored metal building with a dark roof is compatible in appearance with area agricultural structures in accordance with Section 131.N.27.g.

h. Minor repairs to vehicles or equipment shall be permitted, provided such activities take place inside a building. Body work, engine rebuilding, engine reconditioning, painting and similar activities shall not be permitted.

The Petitioners will make only minor repairs to vehicles or equipment inside the building, in accordance with Section 131.N.27.h.

ORDER


Based upon the foregoing, it is this 19th day of MAY, 2010, by the Howard County Board of Appeals, ORDERED:

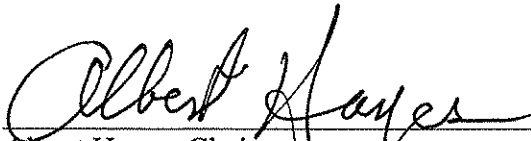
That the amended petition of Harry G. Pirrung, Jr., and Linda M. Pirrung, t/a T.W. Boys Co., Inc., for a Home-Based Contractor Conditional Use in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District be, and the same is hereby GRANTED, subject to the following conditions:

1. The Conditional Use shall apply only to the proposed use as described in the amended petition, and as depicted on the Conditional Use plan for the Property submitted to the Board on October 27, 2009, as Petitioners' Exhibit #1 and not to any other activities, uses, or structures on the Property.
2. The Petitioners are prohibited from manufacturing or assembling pre-engineered buildings (wooden or metal) on the Property.
3. The "personal parking" area designated on Petitioners' Exhibit #1 Conditional Use Plan shall be removed.
4. The Petitioners shall comply with all applicable Federal, State, and County laws regulations.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS

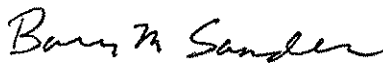

Ann Nicholson, Secretary

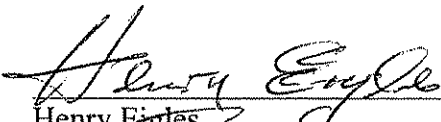

Albert Hayes, Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR


James Walsh, Vice Chairperson


*Maurice Simpkins

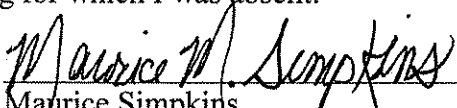

Barry M. Sanders
Assistant County Solicitor


Henry Eights

Did Not Participate

**John Lederer

* I certify that I have listened to the recordings of the case and reviewed all the evidence submitted for the November 24, 2009 hearing for which I was absent.


Maurice Simpkins

** Board Member Kevin Doyle's term serving on the Board of Appeals expired on May 1, 1010, prior to the issuance of this Decision and Order. His replacement Mr. John Lederer did not participate in this decision.